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7                   UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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9                   SCOTT PUTNAM,

10                  Plaintiff,

11                  v.

12                  NANCY A. BERRYHILL, Deputy  
Commissioner of Social Security for  
Operations,

13                  Defendant.

14                  NO. C17-5670-JPD

15                  ORDER

16         Plaintiff Scott Putnam appeals the final decision of the Commissioner of the Social  
17         Security Administration (“Commissioner”) that denied his application for Disability Insurance  
18         Benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401-33, after a hearing  
19         before an administrative law judge (“ALJ”). For the reasons set forth below, the Court  
AFFIRMS the Commissioner’s decision.

20                  I.       FACTS AND PROCEDURAL HISTORY

21         At the time of the administrative hearing, Plaintiff was a 33-year-old man with an 11th-  
22         grader education. Administrative Record (“AR”) at 43. His past work experience includes  
23         employment as a laborer and valet. AR at 344. Plaintiff was last gainfully employed in 2010.  
24         AR at 19, 45, 263.

1 In September 2013, Plaintiff protectively filed an application for DIB, alleging an onset  
2 date of December 25, 2007.<sup>1</sup> AR at 112, 251-54. Plaintiff asserts that he is disabled due to a  
3 back injury and numbness in his right leg. AR at 335, 366.

The Commissioner denied Plaintiff's claim initially and on reconsideration. AR at 148-54, 157-61. Plaintiff requested a hearing, which took place on July 10, 2015. AR at 38-69. On February 2, 2016, the ALJ issued a decision finding Plaintiff not disabled and denied benefits based on her finding that Plaintiff could perform a specific job existing in significant numbers in the national economy. AR at 16-29. Plaintiff's administrative appeal of the ALJ's decision was denied by the Appeals Council, AR at 1-7, making the ALJ's ruling the "final decision" of the Commissioner as that term is defined by 42 U.S.C. § 405(g). On August 25, 2017, Plaintiff timely filed the present action challenging the Commissioner's decision. Dkt. 1, 3.

## II. JURISDICTION

14 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§  
15 405(g) and 1383(c)(3).

### III. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits when the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

<sup>22</sup> *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (1989).

<sup>1</sup> At the hearing, Plaintiff amended his alleged onset date to April 13, 2009. AR at 16.

1 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in  
2 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,  
3 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a  
4 whole, it may neither reweigh the evidence nor substitute its judgment for that of the  
5 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is  
6 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that  
7 must be upheld. *Id.*

#### 8 IV. EVALUATING DISABILITY

9 As the claimant, Mr. Putnam bears the burden of proving that he is disabled within the  
10 meaning of the Social Security Act (the "Act"). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th  
11 Cir. 1999) (internal citations omitted). The Act defines disability as the "inability to engage in  
12 any substantial gainful activity" due to a physical or mental impairment which has lasted, or is  
13 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§  
14 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if his impairments are  
15 of such severity that he is unable to do his previous work, and cannot, considering his age,  
16 education, and work experience, engage in any other substantial gainful activity existing in the  
17 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-  
18 99 (9th Cir. 1999).

19 The Commissioner has established a five step sequential evaluation process for  
20 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§  
21 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At  
22 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at  
23 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step  
24 one asks whether the claimant is presently engaged in "substantial gainful activity." 20 C.F.R.

1 §§ 404.1520(b), 416.920(b).<sup>2</sup> If he is, disability benefits are denied. If he is not, the  
2 Commissioner proceeds to step two. At step two, the claimant must establish that he has one  
3 or more medically severe impairments, or combination of impairments, that limit his physical  
4 or mental ability to do basic work activities. If the claimant does not have such impairments,  
5 he is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe  
6 impairment, the Commissioner moves to step three to determine whether the impairment meets  
7 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),  
8 416.920(d). A claimant whose impairment meets or equals one of the listings for the required  
9 twelve-month duration requirement is disabled. *Id.*

When the claimant's impairment neither meets nor equals one of the impairments listed in the regulations, the Commissioner must proceed to step four and evaluate the claimant's residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the Commissioner evaluates the physical and mental demands of the claimant's past relevant work to determine whether he can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant is able to perform his past relevant work, he is not disabled; if the opposite is true, then the burden shifts to the Commissioner at step five to show that the claimant can perform other work that exists in significant numbers in the national economy, taking into consideration the claimant's RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable to perform other work, then the claimant is found disabled and benefits may be awarded.

<sup>2</sup> Substantial gainful activity is work activity that is both substantial, i.e., involves significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. § 404.1572.

## V. DECISION BELOW

On February 2, 2016, the ALJ issued a decision finding the following:

1. The claimant last met the insured status requirements of the Social Security Act on March 31, 2014.
  2. The claimant did not engage in substantial gainful activity during the period from the date he can first be found disabled, May 3, 2011.
  3. Through the date last insured, the claimant had the following severe impairments: degenerative disc disease of the lumbar spine, obesity, and a congenital deformity of the hand.
  4. Through the date last insured, the claimant did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.
  5. After careful consideration of the entire record, I find that, through the date last insured, the claimant had the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) except he could only perform frequent squatting and kneeling. The claimant could perform frequent reaching, handling, and fingering with the bilateral upper extremities. He could perform occasional twisting, bending, and stooping and occasional overhead reaching with the bilateral upper extremities. The claimant could crawl and be exposed to vibrations, seldom (less than 10 percent of the time).
  6. Through the date last insured, the claimant was unable to perform any past relevant work.
  7. The claimant was born on XXXXX, 1981, and was 32 years old, which is defined as a younger individual age 18-49, on the date last insured.<sup>3</sup>
  8. The claimant has a limited education and is able to communicate in English.
  9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is “not disabled,” whether or not the claimant has transferable job skills.
  10. Through the date last insured, considering the claimant’s age, education, work experience, and residual functional capacity, there

<sup>3</sup> The actual date is deleted in accordance with Local Rule CR 5.2, W.D. Washington.

were jobs that existed in significant numbers in the national economy that the claimant could have performed.

11. The claimant was not under a disability, as defined in the Social Security Act, at any time from May 3, 2011, the alleged onset date, through March 31, 2014, the date last insured.

4 AR at 18-29.

5 VI. ISSUES ON APPEAL

6 The principal issues on appeal are:

- 7 1. Whether the ALJ erred in assessing Plaintiff's manipulative limitations; and  
8 2. Whether the ALJ erred in discounting Plaintiff's subjective testimony.

9 Dkt. 10 at 1.

10 VII. DISCUSSION

- 11 A. The ALJ did not err in assessing Plaintiff's manipulative limitations.

12 Plaintiff argues that the ALJ's RFC assessment fails to adequately account for his  
13 manipulative limitations: the ALJ found him capable of performing manipulative limitations  
14 on a frequent basis, but he contends that he should have been found more limited.

15 The "final responsibility" for decision issues such as an individual's RFC "is reserved  
16 to the Commissioner." Social Security Ruling ("SSR") 96-5p, 1996 WL 374183, at \*2 (Jul. 2,  
17 1996). *Accord* 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2), 404.1546(c), 416.946(c). That  
18 responsibility includes "translating and incorporating clinical findings into a succinct RFC."  
19 *Rounds v. Comm'r of Social Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (citing *Stubbs-*  
20 *Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008)). An RFC finding need not directly  
21 correspond to a specific medical opinion. *Chapo v. Astrue*, 682 F.3d 1285, 1288 (10th Cir.  
22 2012). The ALJ may incorporate the opinions of a physician by assessing RFC limitations  
23 entirely consistent with, but not identical to limitations assessed by the physician. *See Turner*  
24 *v. Comm'r of Social Sec. Admin.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010).

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2 Plaintiff suffered injuries in a fireworks incident on July 4, 1998. *See* AR at 460, 1369.  
3 The ALJ found that Plaintiff's "congenital deformity of the hand" was a severe impairment at  
4 step two. AR at 19, 21. The ALJ found that Plaintiff could perform manipulative activities at  
5 the frequent level, in light of medical opinions indicating the same as well as Plaintiff's daily  
6 activities (specifically driving a car with manual transmission, painting motor engine parts,  
7 cooking, cleaning, vacuuming, laundering, shopping, and lifting 35 pounds) and his work  
8 history at the medium-to-heavy level. AR at 23-24.

9 Plaintiff points to other evidence in the record that he claims suggests that he could not  
10 perform manipulative activities at the frequent level, specifically dexterity testing performed  
11 by a physical therapist. Dkt. 10 at 3-4. He also argues that his ability to perform medium-to-  
12 heavy work in the past has no bearing on his ability to perform manipulative activities because  
13 his past jobs did not involve any "fine manipulation and dexterity necessary to perform  
14 sedentary or light work." Dkt. 10 at 4. Plaintiff also argues that his ability to drive a car with a  
15 manual transmission does not implicate use of his left (injured) hand, that using a bottle of  
16 spray paint on one occasion does not implicate his left (non-dominant) hand, and that lifting 35  
17 pounds does not constitute a manipulative activity. Dkt. 10 at 5.

18 Plaintiff has failed to show that the ALJ erred in assessing the extent of his  
19 manipulative limitations. The dexterity testing performed by a physical therapist cited by  
20 Plaintiff was acknowledged by the ALJ (AR at 24), and this physical therapist indicated  
21 repeatedly that Plaintiff could perform fine manipulation at the frequent level. AR at 517, 522,  
22 523, 529-31, 544. This evidence is consistent with the ALJ's RFC assessment, and does not  
23 therefore support Plaintiff's argument that the ALJ erred in assessing his manipulative  
24 limitations.

1 Furthermore, as cited by the ALJ, examining physician Lisa Garrison, M.D., addressed  
2 Plaintiff's manipulative limitations, and opined that he could perform manipulative activities at  
3 the frequent level. *See* AR at 463-64. Although Plaintiff posits that it is "absurd on its face" to  
4 find that he could perform manipulative activities on a frequent basis despite his injuries, the  
5 medical opinion evidence indicates otherwise and constitutes substantial evidence supporting  
6 the ALJ's RFC assessment.<sup>4</sup>

7 Even if Plaintiff is correct that some of the activities cited by the ALJ do not reasonably  
8 bear on his ability to perform manipulative activities, any error is harmless as to certain  
9 activities is harmless because, as discussed *supra*, the ALJ's RFC assessment is supported by  
10 substantial evidence. Notably, Plaintiff did not challenge all of the activities cited by the ALJ,  
11 such as cooking, cleaning, vacuuming, doing laundry, and shopping. *See* AR at 23.

12 B. The ALJ did not err in discounting Plaintiff's subjective testimony.

13 The ALJ discounted Plaintiff's subjective testimony for three primary reasons: (1) his  
14 daily activities and medical record suggest he can perform light work and frequent  
15 manipulative activities; (2) he uses a cane without medical necessity or a prescription; and (3)  
16 Plaintiff takes only over-the-counter pain medications. AR at 23-27. Plaintiff argues that the  
17 ALJ's reasoning was legally insufficient.

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19 <sup>4</sup> Plaintiff also argues that the ALJ erred in failing to fully develop the record regarding  
20 his manipulative limitations because "at the time of the hearing, there was virtually no medical  
21 evidence directly evaluating plaintiff's functional capacity with his left hand." Dkt. 10 at 15.  
22 As explained herein, both Dr. Garrison and Plaintiff's physical therapist performed testing and  
23 concluded that Plaintiff could perform manipulative activities on a frequent basis. Although  
24 Plaintiff posits that further development of the record is possible, he has not shown that the  
ALJ's interpretation of the medical evidence is unreasonable or that the record as currently  
constituted is inadequate to allow the ALJ to assess Plaintiff's manipulative limitations. *See*  
*Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001) (holding that "[a]n ALJ's duty to  
develop the record further is triggered only when there is ambiguous evidence or when the  
record is inadequate to allow for proper evaluation of the evidence.").

1           1.     *Legal standards*

2           As noted above, it is the province of the ALJ to determine what weight should be  
3 afforded to a claimant's testimony, and this determination will not be disturbed unless it is not  
4 supported by substantial evidence. A determination of whether to accept a claimant's  
5 subjective symptom testimony requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929;  
6 *Smolen*, 80 F.3d at 1281. First, the ALJ must determine whether there is a medically  
7 determinable impairment that reasonably could be expected to cause the claimant's symptoms.  
8 20 C.F.R. §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces  
9 medical evidence of an underlying impairment, the ALJ may not discredit the claimant's  
10 testimony as to the severity of symptoms solely because they are unsupported by objective  
11 medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick v.*  
12 *Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Absent affirmative evidence showing that the  
13 claimant is malingering, the ALJ must provide "clear and convincing" reasons for rejecting the  
14 claimant's testimony.<sup>5</sup> *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014) (citing  
15 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)). See also *Lingenfelter v. Astrue*, 504  
16 F.3d 1028, 1036 (9th Cir. 2007).

17           When evaluating a claimant's subjective symptom testimony, the ALJ must specifically  
18 identify what testimony is not credible and what evidence undermines the claimant's  
19 complaints; general findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at  
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<sup>5</sup> In SSR 16-3p, the Social Security Administration rescinded SSR 96-7p, eliminated  
22 the term "credibility" from its sub-regulatory policy, clarified that "subjective symptom  
23 evaluation is not an examination of an individual's character[,] and indicated it would more  
24 "more closely follow [its] regulatory language regarding symptom evaluation." SSR 16-3p.  
However, this change is effective March 28, 2016, and not applicable to the February 2016  
ALJ decision in this case. The Court, moreover, continues to cite to relevant case law utilizing  
the term credibility.

1       722. The ALJ may consider “ordinary techniques of credibility evaluation,” including a  
2       claimant’s reputation for truthfulness, inconsistencies in testimony or between testimony and  
3       conduct, daily activities, work record, and testimony from physicians and third parties  
4       concerning the nature, severity, and effect of the alleged symptoms. *Thomas*, 278 F.3d at 958-  
5       59 (citing *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)).

6              2.       *Specificity*

7       Plaintiff suggests that the ALJ’s reasoning is inadequate because she did not identify  
8       which testimony she found credible and which testimony was undermined by which evidence.  
9       Dkt. 10 at 9. Plaintiff is mistaken. The ALJ explained that she credited Plaintiff’s testimony  
10      regarding some limitations in exertional and postural activities, as well as environmental  
11      conditions, but that his testimony regarding limitations that would preclude light work and/or  
12      frequent manipulative activities was inconsistent with the medical evidence and Plaintiff’s  
13      activities. AR 23-24. The ALJ also noted that Plaintiff testified that he required the use of a  
14      cane, but that there was no medical evidence supporting this necessity and no prescription for a  
15      cane in the medical record. AR at 23. The ALJ also found that Plaintiff’s use of over-the-  
16      counter pain medication undermines testimony regarding limitations caused by pain. AR at  
17      22-23. These findings are sufficiently specific; the ALJ did not “simply reject plaintiff’s  
18      testimony out of hand,” as Plaintiff alleges. Dkt. 10 at 9.

19              3.       *Work history*

20       The ALJ noted that Plaintiff worked after the alleged onset date, and cited that work  
21       activity as undermining testimony. AR at 23. Plaintiff argues that his minimal work activity  
22       after the alleged onset date could not reflect adversely on his testimony, focusing on the fact  
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1 that he could not have been paid benefits before March 31, 2011,<sup>6</sup> and therefore work  
2 predating this time is not inconsistent with his allegations. Dkt. 10 at 10. It may be true that  
3 Plaintiff could not have been paid benefits prior to May 3, 2011, due to an administratively  
4 final prior decision, but Plaintiff nonetheless alleged that he was unable to work as of April 13,  
5 2009. Evidence that he worked after that date reasonably undermines his allegation that he  
6 could not work after that date. The ALJ did not Plaintiff's return to work in 2010 as evidence  
7 that he could perform that same work at the present time; the ALJ acknowledged that Plaintiff  
8 subsequently reinjured himself (AR at 19) and found that Plaintiff could not return to his prior  
9 work (AR at 27-28). Plaintiff has not shown that the ALJ's limited inference was  
10 unreasonable.

11           4.     *Activities*

12       The ALJ listed several activities that she found to be consistent with an ability to  
13 perform light work and frequent manipulative activities. *See AR at 23-24.* The ALJ did not  
14 identify how these activities either contradict Plaintiff's testimony or demonstrate the existence  
15 of transferable work skills, and therefore erred in relying on his activities to discount his  
16 testimony. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (activities may undermine  
17 credibility where they (1) contradict the claimant's testimony or (2) "meet the threshold for  
18 transferable work skills"). This error is harmless, however, in light of the ALJ's other reasons  
19 to discount Plaintiff's testimony, which remain valid. *See Carmickle v. Comm'r of Social Sec.*  
20 *Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

21           5.     *Use of a cane*

22       A claimant's use of a cane that is not medically necessary is a clear and convincing

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24           <sup>6</sup> Plaintiff refers to the wrong date: the earliest he could have been eligible for benefits  
is May 3, 2011. *See AR at 19.*

1 reason to discount a claimant's testimony. *See Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th  
2 Cir. 1999) (considering a claimant's use of an assistive device without clear medical indication  
3 as one valid credibility consideration). Plaintiff argues that he was not required to obtain a  
4 prescription to use a cane (Dkt. 10 at 13), but does not address whether the record shows that a  
5 cane was medically required. He has not established error in this line of the ALJ's reasoning.

6       6.     *Characterization of surgery*

7 Plaintiff objects to the ALJ's reference to his back surgeries as "relatively non-invasive  
8 laminectomies." AR at 23. Plaintiff argues that none of his procedures was "'non-invasive in  
9 any sense of the word[,]'" and that the ALJ erred in relying on this characterization to discredit  
10 him. Dkt. 10 at 13. The ALJ did not rely on this characterization to discredit him, however,  
11 but pointed out how Plaintiff's providers consistently found him to be capable of performing at  
12 least light-level work after these surgeries. AR at 23. Plaintiff has not established prejudicial  
13 error in the ALJ's description of his back surgeries.

14       7.     *Pain medication*

15 The ALJ noted that Plaintiff testified that he only took over-the-counter ibuprofen to  
16 manage his pain, and inferred from that fact that his pain would not preclude him from  
17 performing a light job. AR at 23 (referencing AR at 50). Plaintiff emphasizes that he testified  
18 that he is allergic to two pain medications and that another does not relieve his pain, and that  
19 he is afraid to take pain medication because he fears feeling better and then reinjuring himself.  
20 *See* AR at 50. Plaintiff also argues that the ALJ erred in failing to acknowledge that he has  
21 taken stronger medications in the past. Dkt. 10 at 14.

22 Plaintiff has not shown that the ALJ's inferences are unreasonable. *See Parra v.*  
23 *Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007) (stating that "evidence of 'conservative  
24 treatment' is sufficient to discount a claimant's testimony regarding severity of an

1 impairment"). Although Plaintiff offers an alternative interpretation of the evidence related to  
2 his pain medication use, he has not shown that the ALJ erred in finding that because he relied  
3 only on over-the-counter medication, his pain was not so severe as to preclude all work  
4 activity.

5 In sum, the ALJ provided many clear and convincing reasons to discount Plaintiff's  
6 subjective testimony, and any erroneous reasoning was harmless. Accordingly, the Court  
7 affirms the ALJ's assessment of Plaintiff's subjective statements.

## VIII. CONCLUSION

9 The role of this Court is limited. As noted above, the ALJ is responsible for  
10 determining credibility, resolving conflicts in medical testimony, and resolving any other  
11 ambiguities that might exist. *Andrews*, 53 F.3d at 1039. When the evidence is susceptible to  
12 more than one rational interpretation, it is the Commissioner's conclusion that must be upheld.  
13 *Thomas*, 278 F.3d at 954. While it may be possible to evaluate the evidence as Plaintiff  
14 suggests, it is not possible to conclude that Plaintiff's interpretation is the only rational  
15 interpretation.

16 For the foregoing reasons, the Court AFFIRMS the Commissioner's decision.

17 DATED this 20th day of April, 2018.

*James P. Donohue*  
JAMES P. DONOHUE  
United States Magistrate Judge